Complaint

Mr E complains that Elevate Credit International Limited (trading as Sunny) lent him money that he couldn't afford to repay.

Background

Mr E took out 17 loans with Sunny between September 2014 and July 2018.

Mr E wants Sunny to refund the interest and charges that he paid together with interest on the refund.

Before this service became involved, Sunny offered to refund the interest and charges that Mr E had paid on loan one. As Mr E had paid this on time, Sunny said that there was no negative information to remove from his credit file.

The adjudicator recommended that Sunny do more than it had offered so far. The adjudicator thought that Sunny should not have agreed loans six to 17.

The adjudicator asked Sunny to remove any negative information about loan six from Mr E's credit file. He recommended that Sunny remove loans seven onwards entirely from Mr E's credit file. The adjudicator also recommended that Sunny refund the interest and charges that Mr E had paid on the affected loans.

Sunny disagreed with the adjudicator's view to the complaint has come to me for a final decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Sunny needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr E could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure.

With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate. But certain factors might point to the fact that Sunny should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);

- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think it's important for me to start by saying that Sunny was required to establish whether Mr E could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the Consumer Credit Sourcebook defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments.

So it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they will need to borrow more money to afford the repayments.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr E's complaint.

Sunny has already offered to put things right for Mr E so I've included a direction in my decision about what steps it should take if Mr E accepts my decision.

As Mr E hasn't objected to the adjudicator's recommendation not to uphold his complaint about loans two to five, I won't say anything further about these and instead will concentrate on loan six onwards.

Loan six

By loan six, Mr E had borrowed money five times in less than four months. Although Sunny asked for details of Mr E's income and outgoings, I consider that it should've been doing more than it did to make sure that Mr E could afford to repay the loan.

If Sunny had carried out the kinds of checks that I think were proportionate, it seems likely that it would've discovered that Mr E owed money to a number of short term lenders. Mr E also had regular gambling transactions on his account. This meant that Mr E wasn't able to sustainably afford to repay loan six.

I appreciate that Sunny says it didn't consider customer's bank statements but that's just one way in which it could've established a more detailed understanding of Mr E's finances. And to answer Sunny's comment that Mr E could have prioritised his credit commitments over gambling transactions overlooks the fact that Mr E was borrowing from multiple short term lenders at the same time. This might be an indication of a deeper gambling problem. However, even if I was to discount the gambling transactions around the time of loan six, Mr E's various other short term lending commitments meant that he had a negative disposable monthly income.

With better checks, I don't consider that Sunny would have agreed to lend. It follows that I uphold Mr E's complaint about loan six.

Loan seven onwards

I've also looked at the overall pattern of Sunny's lending history with Mr E, with a view to seeing if there was a point at which Sunny should reasonably have seen that further lending was unsustainable or otherwise harmful. And so Sunny should have realised that it shouldn't have given Mr E any more loans.

Given the particular circumstances of Mr E's case, I think that this point was reached by loan seven. I say this because the overall pattern of Mr E's borrowing suggested that he'd become persistently reliant on short term loans.

Loan seven was the sixth loan that Mr E had taken out in just over four months. And loan seven was the largest loan so far.

Loan six was still running when Mr E applied for loan seven. Mr E had asked to borrow loan six on the same day that he repaid loan five and at the time, Mr E still hadn't settled loan four.

I think this pattern of lending was an indication that Mr E might be having difficulties managing his money and was using short term loans for everyday living costs rather than one-off expenses.

Mr E continued to have overlapping loans. So Sunny should have realised that it was more likely than not Mr E was reliant on short term lending and needed to borrow further to fill the hole repaying his previous loans was leaving in his finances.

Although the amounts that Mr E borrowed sometime fluctuated, he often had two loans open at the same time. For example, although loan 10 was for £150 – Mr E went on to borrow a further £300 within the space of 20 days. So Mr E wasn't making any real inroads into what he owed Sunny and his indebtedness was being prolonged. This meant that Mr E had been paying large amounts of interest to, in effect; service a debt to Sunny over a long period.

I think that Mr E lost out because Sunny continued to lend money from loan seven onwards because:

- these loans had the effect of unfairly prolonging Mr E's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time.
- the extended period of time he owed Sunny money was likely to have had negative implications on Mr E's ability to access mainstream credit and so kept him in the market for these high-cost loans.

I'm upholding Mr E's complaint about loans six to 17.

Putting things right – what Sunny needs to do

- refund all interest and charges that Mr E paid on loan one and loans six to 17;
- add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*;
- remove any negative information about loan six from Mr E's credit file; and
- the number of loans taken by the time of loan seven means that any information about loans seven to 17 is negative. So all entries about loans seven to 17 should be removed from Mr E's credit file.

*HM Revenue & Customs requires Sunny to take off tax from this interest. Sunny must give Mr E a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold Mr E's complaint in part and direct Active Securities Limited (trading as Sunny) to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 28 September 2019.

Gemma Bowen
Ombudsman